

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.10416 of 2008

A.Lakshmi

... Petitioner

Versus

1.The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai - 600 005.

2.The Joint Chief Engineer (General),
TWAD Board Head Office,
31, Kamarajar Salai,
Chepauk, Chennai - 600 005.

3.The Secretary to Government,
Personal and Administrative
Reforms Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

4.The Secretary to Government,
Municipal Administration and Water
Supply Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking Writ of Certiorarified Mandamus, to call for the records connected with the letter vide Lr.No.68692/A2/SC/HO/03, dated 16.11.2007 passed by the first respondent and quash the same and further direct the respondents to revise the seniority for the posts of Assistants and Superintendents placing the name of the petitioner in the appropriate place in between Mr.S.Paranthaman and Mr.P.A.Murugappan in the posts of Assistants and Superintendents duly permitting to draw all monetary and attended benefits on par with the petitioner, Junior Thiru. P.A.Murugappan retrospectively from the dates on which he was promoted to the posts of Assistant,

Superintendent and Administrative Officer within the time frame.

For Petitioner :M/s.G.P.Arivuchudar

For R1 & R2 :Mrs.R.Gandhimadi

For R3 & R4 :Mrs.Thanga Vadhana Balakrishnan,
Additional Government Pleader

O R D E R

The petitioner was appointed as Junior Assistant in Tamil Nadu Water Supply and Drainage Board, (in short 'TWAD Board') on 02.12.1970 with scale of pay of Rs.210-5-245-10-325 and completed his probation on 15.05.1973. She has also passed the Account Test for PWD Officers and Subordinates held in May 1975 which is one of the pre-requisite qualifications for promotion to the post of Assistant under TWAD Board Ministerial Service as constituted in TWAD Board Service Regulations, 1972.

2. The petitioner would contend that the Account test was held in May 1975 and the result was published in the month of August 1975 in which the petitioner has come out successfully and qualified for promotion of the post of Assistant for the financial year 1976-1977. Based on the vacancies, a panel for Junior Assistants fit for promotion to the post of Assistant as on 31.12.1975 was drawn in which the name of the petitioner was included. Based on the inclusion of the name of the petitioner, she was promoted and joined as Assistant on 23.05.1977 FN vide Proceedings dated 14.03.1997 in the scale of pay 250-10-300-15-450. The service of the petitioner was also regularized with effect from 23.05.1977 vide proceedings dated 18.10.1977 as per the regulations 22 and 23 of the TWAD Board service, 1972. On completion of 10 year of service in the post of Assistant, she was permitted to move to Selection Grade on 21.05.1987 AN in the scale of pay in 905-45-1445-1545. Subsequently, the respondent approved the panel of Assistants fit for promotion to the post of Superintendents for the year, 1996, in which the petitioner was placed in Serial No.193 and based on the same, she was promoted as Superintendent on 18.12.1996. According to the petitioner, such promotion was given to her on 18.12.1996, nine years after his junior Thiru. K. Sambandam was promoted as Superintendent on 27.11.1987. In support of her contention, the petitioner relied on Rule 22 and 34-C of TWAD Board Service Regulations, 1972 to demonstrate that for promotion to the post of Assistant, the promotee has to

satisfy that he or she is senior in the feeder post, completed the probation in the feeder category post and passed Account Test for PWD Officers and Subordinates. Further, as per Rule 4 of the Tamil Nadu State and Subordinate Service Rules, Part-II General Rules and GO Ms. No.368, Personnel and Administrative Reforms dated 18.10.1993 the annual panel for the post of Assistant has to be prepared as on 31st December of each year based on the norms such as (i) seniority in the lower post (ii) completion of probation and (iii) those who have passed accounts test for the estimated vacancies for the next financial year i.e., anticipated vacancies from April to March of next financial year. It is also stated that the Account Test will be held in the month of May and November of each year and the results of the test would be published in the month of November and March of next calendar year.

3. The grievance of the petitioner is that the annual panel for the anticipated vacancies for the next financial year will be prepared by including those who are eligible for promotion as on 31st December. On the contrary, the respondent prepared the seniority list for the post of Assistant taking into account the candidates who have appeared for the Accounts Test during November and who are awaiting results of the test. This according to the petitioner is contrary to the order of the Government and the TWAD Board Service Regulations, 1972 and it had resulted in the petitioner's junior Mr. K. Sambandam getting promotion ahead of the petitioner. According to the petitioner, she joined as Junior Assistant on 02.12.1970, whereas the said Sambandam joined on 31.07.1971. Further, the service of the petitioner in the cadre of Junior Assistant was regularised on 14.04.1971, but the service of the said Sambandam was regularised in the cadre of Junior Assistant on 31.07.1971. Similarly, the seniority of the petitioner was 169 in the combined seniority list for the post of Junior Assistant and the said Sambandam was placed in Serial No.178. While the petitioner passed the Accounts test during May 1975, the said Sambandam passed such test during November 1974. The petitioner was promoted to the post of Assistant on 23.05.1977, while her junior Sambandam was given such promotion ahead of her on 18.04.1977. Similarly, the petitioner got promoted on 18.12.1996 whereas her junior got such promotion even on 27.11.1987. According to the petitioner, while preparing the seniority list for promotion to the post of Assistant on 23.11.1990, the respondent Board has flouted all the norms and rules which resulted in her junior getting promotion much before she could get the promotion. The petitioner stated to have given several representation, including the one on

30.10.2002 which was forwarded to the first respondent by the Chief Engineer, Northern Region, Vellore. However, the Chief Engineer has replied in his letter dated 27.08.2003 that her request would be entertained after publication of confirmed seniority in the category of Superintendent. However, since the petitioner did not get any favourable response, she once again submitted a letter dated 12.07.2006 to the first respondent. As there was no response, she filed WP No. 30551 of 2007 before this Court and this Court disposed of the writ petition on 20.09.2007 with a direction to dispose of the representation of the petitioner on merits. Pursuant to such direction, the first respondent has passed an order rejecting the claim of the petitioner for revising her seniority and it is challenged in this writ petition.

4. The learned counsel for the petitioner would contend that the panel for the estimated vacancies for the next financial year has to be prepared by complying with the norms for promotion which includes the seniority in the lower post, completion of probation in the feeder category post and passing of Accounts test. While so, in violation of the aforesaid norms, which is contemplated in the Tamil Nadu State and Subordinate Service Rules and in GO Ms. No.368, Municipal and Administrative Reforms Department dated 18.10.1993, the respondents have prepared a panel by including the name of the junior of the appellant solely on the basis of date of appearance in the examination instead of passing the Account Test, which is one of the prerequisites for promotion to the post of Assistant. The said procedural irregularity committed by the respondents had adversely affected the prospects of the petitioner in getting promotion ahead of her junior and thereby she is prejudiced. It is further stated that the respondent had issued revised order on 14.06.2003 in respect of Tvl. P. Mahalingam and others on the basis of the orders of this Court passed on 21.09.1999 in WP No. 13651 of 1999 and WP No. 20569 of 1993 and the aforesaid Mahalingam and others were also conferred with promotion. However, the first respondent denied similar claim made by the petitioner and passed the impugned order whereby the petitioner was discriminated and treated arbitrarily. The learned counsel for the petitioner therefore prayed for setting aside the impugned order of the first respondent and to issue appropriate directions to the first respondent to promote the petitioner to the post of Assistant from the date on which her Junior Sambandam was promoted to the said post and also to confer consequential promotion to the post of Superintendent on par with her junior.

5. The learned standing counsel appearing for the respondents 1 and 2 by placing reliance on the counter affidavit of the respondents 1 and 2, would contend that the panel was prepared in accordance with the Rules and norms. The petitioner cannot have grievance especially when she passed the Account test after her junior passed the said test. In such circumstances, merely because the petitioner joined before the date on which her junior Sambandham joined the service, it will not be a ground for the petitioner to seek promotion ahead of her junior especially when the petitioner did not qualify herself for promotion to the post of Assistant by passing the Accounts Test ahead of her junior. The petitioner also did not give any objection when the panel for promotion to the post of Assistant was drawn in the year 1990. Therefore, the learned counsel prayed for dismissal of the writ petition.

6. The learned Additional Government Pleader appearing for the respondents 3 and 4 would contend that when the panel was prepared for promotion to the post of Assistant on 23.11.1990, the petitioner did not object to it for the reason that at the time of preparing the panel, she did not complete the Accounts Test. Therefore, even though the petitioner was placed ahead of her junior in the panel, since she did not pass the Accounts Test, which is mandatory for promotion to the post of Assistant, she was not conferred with such promotion and this is how, the so-called junior of the petitioner could get promotion ahead of the petitioner. Even as admitted by the petitioner, for the first time, she gave a representation on 30-10-2002, by which time, her junior Sambandham had been given further promotion to the post of Superintendent on 27.11.1987. In any event, since the petitioner did not pass the Accounts test ahead of her junior, she was not given the promotion at the time when her junior was given such promotion to the post of Assistant. The learned Additional Government Pleader therefore prayed for dismissal of the writ petition.

7. Heard the counsel for both sides and perused the material records placed. Even as admitted by the petitioner, she joined as Junior Assistant on 02.12.1970, whereas the said Sambandham joined as Junior Assistant on 31.07.1971. The service of the petitioner in the cadre of Junior Assistant was regularised on 14.04.1971 and the service of the said Sambandham was regularised in the cadre of Junior Assistant on 31.07.1971. Even as admitted by the petitioner, her seniority was 169 in the combined seniority list for the post of Junior Assistant and the said Sambandham was included in Serial No.178. However, even as admitted by the petitioner, she passed the Accounts test only during May 1975, whereas, her junior Sambandham passed

the Accounts Test even during November 1974. Therefore, at the time when the panel was prepared for promotion to the post of Assistant, since the petitioner passed the Accounts Test belatedly after her junior, she was given promotion to the post of Assistant on 23.05.1977 after her Junior Sambandam got such promotion on 18.04.1977 itself. This had reflected in the subsequent promotions to the post of Superintendent among the petitioner and her junior Sambandam. Further, at the time of drawal of panel for the post of Assistant on 23.11.1990, the petitioner did not raise any objection. Even in the affidavit filed in support of the writ petition, the petitioner herself has stated that she has given a letter on 30-10-2002 and it was not considered, therefore, she had sent a letter on 12.07.2006. When there was no response forthcoming from the respondent to her letter dated 12.07.2006, the petitioner approached this Court with WP No. 30551 of 2007 and it was disposed of on 20.09.2007 with a direction to consider the representation of the petitioner on merits. Pursuant to such direction, the order, which is impugned in this writ petition was passed. Therefore, when the petitioner did not submit any objection for drawal of the panel on 23.11.1990, she is estopped from making any claim for promotion on par with her junior at this stage. As per regulation 22 & 34(C) of the Board Service Regulations, 1972 the seniority for promotion for the post of Assistants shall be fixed based on the following terms (i) seniority in the feeder post (ii) completion of probation in the feeder post and (iii) passing of account test for PWD Officers and Sub-ordinates. In any event, the passing of the Account Test by the petitioner and her junior is the governing factor for determination of promotion and when the petitioner admittedly passed the said test belatedly, which is one of the pre-requisites for conferment of promotion to the post of Assistant, and at this stage, it cannot be said that the petitioner was unjustly denied promotion to the post of Assistant and the subsequent promotion to the post of Superintendent.

8. In the result, the writ petition fails and it is dismissed. No costs.

Sd/-/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai - 600 005.

2.The Joint Chief Engineer (General),
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3.The Secretary to Government,
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4.The Secretary to Government,
Municipal Administration and Water
Supply Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

+1cc to Mr.S.Sivakumar , Advocate SR.No. 40697
+1cc to Mrs.R.Gandhimadi , Advocate SR.No.41334
+1 CC TO GOVERNMENT PLEADER SR.NO.41354

W.P.No.10416 of 2008

ASK(03/10/2018)

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